86-414

No. 86-

Supreme Court, U.S.
FILED
SEP 9 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ST. CYPRIAN'S CHAPEL, INCORPORATED,

Petitioner,

vs.

FRATERNITY OF THE APOSTLES OF JESUS AND MARY, a/k/a THE SACERDOTAL SOCIETY OF ST. PIUS X,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JAMES D. FORNARI
Counsel of Record
RICHARD M. ZUCKERMAN
650 Fifth Avenue
New York, New York 10019
(212) 265-1200

Attorneys for Petitioner

JARBLUM, SOLOMON & FORNARI, P.C.
Of Counsel

Question Presented

When applying the "neutral principles approach" to resolve a church property dispute, may a court, consistent with the First Amendment, broadly inquire into the conduct of laity and clergy, examining factors such as which clergyman blessed the plaque on a church, who provided the clergyman to lead religious services, what was said during fundraising appeals, and whether parishioners deferred to clergymen in church administration, or does the First Amendment require, instead, that a court confine its inquiry to an examination of documents such as corporate charters, deeds, and other instruments of title, which may be examined in a purely secular manner?

Parties

The caption of the case in this Court contains the names of all parties.

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No. 86 -

SUPREME COURT OF THE UNITED STATES

October Term 1986

ST. CYPRIAN'S CHAPEL, INCORPORATED,

Petitioner,

-against-

FRATERNITY OF THE APOSTLES
OF JESUS AND MARY, a/k/a
THE SACERDOTAL SOCIETY OF
ST. PIUS X,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Opinion Below

The opinion of the United States District Court for the Eastern District of Pennsylvania (Hon. Joseph L. McGlynn,

Jr., U.S.D.J.), dated September 16, 1985, is not reported, but appears in the Appendix hereto at A-1. The final judgment of the District Court appears in the Appendix hereto at A-47. The order of the United States Court of Appeals for the Third Circuit, affirming the opinion and final judgment of the District Court, without opinion, dated June 12, 1986, is not reported, but appears in the Appendix hereto at A-51.

Jurisdiction

The order of the United States Court of Appeals for the Third Circuit, affirming the opinion and final judgment of the District Court, was entered June 12, 1986. This Court has jurisdiction pursuant to 28 U.S.C. §1254.

Constitutional and Statutory Provisions

United States Constitution, Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Pennsylvania Control of Church Property Act, 10 P.S. §81 (1935)

Whensoever any property, real or personal, has heretofore been or shall hereafter be...conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture,...the same shall be taken and held subject to the control and disposition of such officers or authori-

ties of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated....

Statement of the Case

Petitioner St. Cyprian's Chapel, Inc. ("St. Cyprian's"), a Delaware not-for-profit corporation formed for the purpose of fostering the traditional Catholic faith including the Latin Mass, brought this action to quiet title to a church building it owned in Eddystone, Pennsylvania. The congregation, priests, and directors of St. Cyprian's all maintain that St. Cyprian's is the rightful owner of the church. Respondent Fraternity of the Apostles of Jesus and Mary, a/k/a the Sacerdotal Society of Saint Pius X (the "Society"), an association of priests based in Switzerland, also formed for the purpose of preserving the traditional liturgy, asserted a claim to the church building and related property. The courts below awarded possession of the church to the Society.

In the early 1970's, after the Second Vatican Council instituted various reforms in the Roman Catholic liturgy, including abandonment of the Latin Mass and its replacement by a Mass offered in the vernacular, a group of Roman Catholic laity in the Philadelphia, Pennsylvania and Wilmington, Delaware area formed a congregation so that they could worship using the traditional liturgy. (JA-244-248) [1]

In 1975, the priest who was offering the Latin Mass for the congregants took ill, and two members of the laity commenced a search for a new priest to celebrate the Latin Mass. (JA-247-248)

In February 1976, the congregants

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[1] References to JA are to the Joint Appendix in the Court of Appeals. References to A are to the Appendix to this Petition.

invited Rev. Donald Sanborn to say the Latin Mass for them. (JA-248-249). Rev. Sanborn was a member of the Society.

The Society had been founded in 1970 with the approval of the Bishop of the Catholic Diocese of Lausanne, Geneva, and Fribourg, Switzerland, based on proposed statutes submitted by Archbishop Marcel Lefebvre (JA-706-709). However, in 1975, the successor bishop of the Diocese withdrew the Decree of Erection which had permitted the Society's formation. (JA-747-750; JA-833-835). This action, called the "Suppression" of the Society, revoked the Society's "right to existence," under canon law. The Suppression was endorsed by a Commission of Cardinals, and by Pope Paul VI. (JA-749-753, JA-836-845). After the Suppression, priests who had been members of the Society continued to associate

with each other, and continued to call their voluntary association by the Society's name.

From 1976 to 1980, the Philadelphia-Wilmington congregation continued to worship together in various rented halls in the region. Fr. Sanborn, and other priests also affiliated with the Society, were invited by the congregants to offer the Latin Mass. (JA-249-251). In November 1977, the congregants adopted the name St. Cyprian's Chapel. (A-8).

In about 1980, two members of the laity of this congregation formed a building committee to locate a permanent church building for the group. No priests -- either from the Society or elsewhere -- served on the building committee. (JA-251).

In 1980, while the search for a church building was under way, the

congregants, assisted by priests from the Society, formed petitioner St. Cyprian's, with the stated purpose of preserving traditional Catholic liturgy, including "to sponsor, promote and conduct the holy sacrifice of the Mass [the Latin Mass], [and] the administration of the sacraments and other religious ceremonies for the members of the Roman Catholic faith." The Articles of Incorporation of St. Cyprian's, duly adopted as a Delaware not-for-profit corporation, made no reference to the Society, or to the priests who belonged to the Society (JA-894 et seq.). The original By-Laws of St. Cyprian's provided that its directors would include several officers of the Society, ex officio, but the Articles of Incorporation contained no such statement and instead designated the initial directors by name and not by title.

In December 1981, St. Cyprian's signed a contract to purchase the church building in Eddystone, Pennsylvania which is the subject of this case. The contract was signed in the name of St. Cyprian's, and made no reference to the Society. At the closing in April 1982, St. Cyprian's accepted the deed to the property in the name of St. Cyprian's. The deed makes no reference to the Society. (JA-919). The mortgage was guaranteed by individual congregants of St. Cyprian's. The mortgage guarantees make no reference to the Society. (JA-928-931).

From the time of the purchase of the church building until the decision of the Court of Appeals in this action, all expenses for the upkeep of the property, and all payments on the mortgage, were paid by the congregants. The Society

never contributed any funds towards the purchase of the church, the payment of the mortgage, or the upkeep of the property. (JA-235 et seq; JA-257-265).

In February 1982, the directors of St. Cyprian's amended its Articles of Incorporation to provide "binding legal assurance that assets of the church there would always be used to promote the traditional Mass and Sacraments, and would never be used to promote the New Mass." The Articles of Incorporation, again, made no reference to the Society. (JA-900-903).

After the purchase of the church building in 1982, the Latin Mass was regularly offered at St. Cyprian's, both by priests associated with the Society and by a priest not associated with the Society. (JA-270).

In 1983, a dispute arose between several United States priests associated

with the Society, including priests who served as directors of St. Cyprian's, on the one hand, and several European priests also associated with the Society, including Archbishop Lefebvre, on the other hand. In April 1983, Archbishop Lefebvre purported to remove the United States priests from their positions in the Society (although it was disputed whether the Society's statutes authorized him to do so). (A-21).

The directors of St. Cyprian's then exercised their right to amend the By-Laws of St. Cyprian's to delete all references to the Society, and to provide explicitly that the directors would select their own successors. (A-21-22).

In October 1983, the Society sent a letter to a member of the laity who served as a director of St.

Cyprian's, in which the Society asserted a claim to St. Cyprian's chapel building in Eddystone, Pennsylvania, and in which the Society purported to instruct St. Cyprian's not to allow certain priests to celebrate Mass at St. Cyprian's chapel. (JA-291-292; 1212).

The congregants of St. Cyprian's, the members of its Board of Directors, and the priests all rejected the Society's claim to ownership of St. Cyprian's chapel building. (JA-291-292).

St. Cyprian's brought this declaratory judgment action against the Society, to quiet title to the St. Cyprian's chapel building, invoking the diversity jurisdiction of the court. The Society counterclaimed for possession of the chapel building, and for an accounting.

On September 16, 1985, after trial, the Hon. Joseph L. McGlynn, Jr., held

that St Cyprian's held the chapel building in trust for the Society (A-1) and, in an order entered October 16, 1985, directed St. Cyprian's to deed the chapel building to the Society's nominee. (A-47).

Judge McGlynn stated that he was applying the "neutral principles" approach to resolving this church property dispute, an approach approved by this Court in Jones v. Wolf, 443 U.S. 595 (1979) and adopted by the Pennsylvania Supreme Court in Presbytery of Beaver-Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church, 507 Pa. 255, 489 A.2d 1317, cert. denied, 106 S. Ct. 198 (1985) ("Presbytery v. Middlesex").

Judge McGlynn held that the instruments of title "established St. Cyprian's as an independent entity beyond the

control of the Society." (A-36). However, Judge McGlynn then proceeded to engage in a broad-ranging examination of the conduct of, and the relationship between and among, laity and clergy, and concluded that St. Cyprian's should not have been established as an independent entity.

Judge McGlynn considered such conduct as:

--After St. Cyprian's signed the contract of sale to purchase the church in Eddystone, Archbishop Lefebvre was asked to approve of what had been done and bless the church (A-17,20).

--When St. Cyprian's raised money for the purchase of the church building, congregants "were encouraged to donate by

the promise that the names of contributors would be placed on a bronze plaque to be blessed by Archbishop Lefebvre when the church was dedicated" (A-20).

--"Advertisements designed to attract new people to the chapel prominently mention the name of the Society." (A-20).

--"The newsletters published by St. Cyprian's Chapel, Inc. continued to link the names of the Society and Archbiship Lefebvre with that of St. Cyprian's Chapel. The May 1982 newsletter reads: "We are sure that everyone will be pleased with our new church and hope that everyone will continue to support the work of the Society of St. Pius X." (A-18).

--When a new priest began to offer the Mass at St. Cyprian's chapel, he was welcomed "to the Society and St. Cyprian's," and came with a letter of introduction from a priest who served both as a director of St. Cyprian's, and as an officer of the Society. (A-18-19).

--Four priests who served as directors of St. Cyprian's also "held positions of authority within the Society." (A-36).

--The laity "did not actively participate in the administration of the chapel or of the corporation," but instead "relied upon the priests." (A-32).

--The Society "provid[ed] the Mass at the chapel." (A-31-32).

Based on this and other conduct, Judge McGlynn concluded that St. Cyprian's held its church building and other property "in trust" for the Society, and therefore held, under the "neutral principles' approach and under the Pennsylvania Control of Church Property Act, 10 P.S. §81(1935), that the Society was entitled to possession of St. Cyprian's church building. Judge McGlynn ordered St. Cyprian's to deed its church building to the Society, and to account to the Society for other property. (A-47).

The Third Circuit affirmed, without opinion (A-51).

Reasons for Granting the Writ

This Court should grant certiorari to make explicit its decision in Jones v. Wolf that, when applying the "neutral principles" approach to determine a church property dispute, courts may not inquire into conduct of laity and clergy, but must confine their inquiry to a secular interpretation of instruments of title.

The manner in which the Courts below applied the "neutral principles" approach to resolve this church property dispute transformed that approach from the narrow secular "interpretation of the instruments of ownership" contemplated by this court's decision in Jones v. Wolf, 443 U.S. at 604, into a delving inquiry into religious practice, which violated the First Amendment's separation of church and state. The Third Circuit thus decided an important federal question "in conflict with applicable decisions of this Court," Rule 17.1(c), Supreme Court Rules. The Third Circuit's decision also conflicts with decisions on this important federal question of several "state court[s] of last resort," including the highest courts of Pennsylvania, New York, Maryland, Georgia, Missouri, and South Dakota. Rule 17.1(a), Supreme Court Rules.

This Court should grant certiorari to make explicit its decision in Jones v. Wolf that the First Amendment prohibits the kind of inquiry into the relationship between and conduct of laity and clergy which the Courts below made, and that, in applying the "neutral principles" approach, courts must confine their inquiry to a secular interpretation of instruments of ownership.

In Jones v. Wolf, this Court held that "the neutral principles of law" approach to resolving church property disputes is consistent with the "First Amendment [which] prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." 443 U.S. at 602-603, citing Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710 (1976). Under the "neutral principles" approach, as

approved by this Court, church property disputes are settled "on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property." 443 U.S. at 603.

Justice Brennan's concurring opinion in Maryland and Virginia Eldership of the Church of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 370 (1970) aptly termed the "neutral principles" approach "the 'formal title' doctrine," noting that "Civil Courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws." (emphasis added).

A proper application of the "neutral principles" approach avoids

entanglement in the operations of a church because it focuses on "an interpretation of the instruments of ownership," Jones v. Wolf, 443 U.S. at 604, and not on an evaluation of the conduct of, or relationship between, laity and clergy. In addition,

> "the neutral-principles analysis shares the peculiar genius of private-law systems in general -- flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members."

443 U.S. at 603-604. Indeed, this Court has held that "religious organizations and individuals" have an "obligation" to

"structure relationships involving church property" to allow civil courts to resolve disputes through "neutral principles." Presbyterian Church v. Hull Church, 393 U.S. 440, 449 (1969), cited in Jones v. Wolf, 443 U.S. at 604. (emphasis added).

The Supreme Court of Pennsylvania adopted the "neutral principles" approach in Presbytery v. Middlesex, and applied it in a manner fully consistent with this Court's opinion and the First Amendment; by limiting its inquiry to an examination of Pennsylvania statutory and case law, the constitution of the nationwide church, proposed amendments to that church constitution, and deeds to the "real estate in controversy." 489 A.2d 1324.

In the case at bar, a diversity action governed by Pennsylvania law, the

District Court stated that it was applying the "neutral principles" approach, as defined by this court and the Pennsylvania Supreme Court. However, instead of limiting its inquiry to a "formal title" study, the District Court engaged in a broad ranging inquiry into the conduct of, and relationship between and among, laity and clergy.

An examination of "instruments of title" would have compelled a conclusion that the church building was the property of St. Cyprian's: The deed is in the name of St. Cyprian's, and the Articles of Incorporation of St. Cyprian's make no reference to the Society. Indeed, the District Court found, based on a review of these instruments of title, that St. Cyprian's was "established...as an independent entity beyond the control of the Society." (A-36). But having so found,

the District Court embarked on a broad inquiry into the conduct of the parties. The District Court then concluded, on the basis of this conduct, that although St. Cyprian's was established as an independent entity, it should not have been. (A-36). The conduct reviewed included consideration of the facts that (a) Archbishop Lefebvre, of the Society, was invited by St. Cyprian's to bless the plaque at the dedication of the church (A-20), (b) when a new priest began offering Mass at the chapel, he was welcomed to "the Society and St. Cyprian's"(A-18), (c) the laity did not actively participate in the administration of the chapel, or of the corporation, but instead relied upon the priests and the lay board member appointed by the priests to administer the corporation (A-32), and (d) four

priests who served as directors of St. Cyprian's "were priests of the Society," and a "confidential relationship" existed between these priests and the Society. (A-36).

This inquiry was an impermissible inquiry into religious practice. While the inquiry did not address any ecclesiastical questions (such as whether the Mass should be offered in Latin or in the vernacular), it did delve deeply into the relationship between and among laity and clergy, which is a vital aspect of religious practice, and cannot be evaluated in secular terms.

When a parishioner decides to defer to a priest on a matter of church administration, the parishioner's intent cannot be evaluated in secular terms, because it is imbued with the religious relationship between the parishioner and the priest.

When a congregation invites an Archbishop to bless a plaque, the act is a religious one, and cannot be accorded secular significance by a Court.

When several priests (including the four priests who served as directors of St. Cyprian's and Archbishop Lefebvre) are associated with each other, an examination into whether there existed a "confidential relationship between these priests and the society," and whether one of the priests was therefore "obligated to" follow instructions of another, is an examination of religious practice which cannot be accorded secular significance.

When the District Court engaged in this broad inquiry into the conduct of, and personal relationships between and among, laity and clergy, it became "a clumsy intruder into the most delicate

and sensitive areas of human life," Presbytery v. Middlesex, 489 A.2d at 1320.

Such an inquiry also undermines this Court's direction, in Jones v. Wolf, that religious organizations have both the opportunity and the obligation to order their affairs, in written instruments such as deeds and charters, to facilitate the application of the "neutral principles" approach. 443 U.S. at 603. Here, St. Cyprian's did so order its affairs. The deed to the property made clear that St. Cyprian's Chapel, Inc. is the owner of the church building, and the Articles of Incorporation of St. Cyprian's made no reference to the Society. Having found that these documents "established St. Cyprian's as an independent entity beyond the control of the Society" (A-36), the court based its

decision instead on the daily conduct of laity and clergy. It is impossible for a religious organization to "ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members," Jones v. Wolf, 443 U.S. at 604, if courts ignore the deliberate precise language of instruments of title and instead evaluate the nuances of daily conduct.

The same Constitutionally impermissible inquiry into religious practice was the basis for the lower courts' conclusion, under Pennsylvania's Control of Church Property Act, 10 P.S. §81 (1935) that the church building was held by St. Cyprian's "in trust" for the Society. That conclusion is similarly Constitutionally infirm.

The Third Circuit's decision thus conflicts with applicable decisions of this Court.

The Third Circuit's decision also conflicts with the decisions of several state courts of last resort on the Constitutional limits of the "neutral principles" approach. The highest courts of Pennsylvania, New York, Maryland, Georgia, Missouri, and South Dakota have all held that, in applying "neutral principles" to a church property dispute, the First Amendment requires that courts confine their inquiries to instruments of title such as deeds, mortgages, and corporate charters. In one state, Colorado, the highest Court has held that the "neutral principles" approach embodies an evaluation of conduct as well as an interpretation of documents.

In Pennsylvania, the Supreme Court has limited its "neutral principles" inquiry to the church constitution, proposed amendments thereto, and deeds.

Presbytery v. Middlesex, 498 A.2d at 1323-1324.

In New York, the Court of Appeals has held:

> "In applying neutral principles, the focus is on the language of the deeds, the terms of the local church charter, the State statutes governing the holding of church property."

First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States, 62 N.Y. 2d 110, 476 N.Y.S. 2d 86, 464 N.E. 2d 454, cert. denied, 105 S. Ct. 514 (1984).

In Maryland, the Court of Appeals examined "state statutory law," the "express language of the deeds," the "language of the charters of the two local church corporations involved," and "the provisions of the Constitution of the General Eldership and of the Md. & Va. Eldership." Maryland and Virginia

Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 254 Md. 162, 254 A.2d 162, 166-168 (1969), app. dismissed, 396 U.S. 367 (1970).

In Georgia, the Supreme Court, on the remand of Jones v. Wolf from this Court, held that the First Amendment limits the "neutral principles" approach to an examination of "state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination." Jones v. Wolf, 244 Ga. 388, 260 S.E. 2d 84 (1979), cert. denied, 444 U.S. 1080 (1980), citing Crumbley v. Solomon, 243 Ga. 343, 254 S.E.2d 330 (1979).

In Missouri, the Supreme Court held that this Court's decision in Jones v. Wolf limited its consideration to the local church's "charter or by laws," "deeds to the involved land," and written

instruments establishing "trust funds." Presbytery of Elijah Parish Lovejoy v. Jaeggi, 682 S.W. 2d 465, 473 (Mo. 1984), cert. denied, 105 S. Ct. 2361 (1985).

In South Dakota, the Supreme Court held that Jones v. Wolf limited a "neutral principles" inquiry to "relevant documents of title" including "deeds" and "two mortgage instruments," "the articles of incorporation of Local Church," and the nationwide church's "constitution." Foss v. Dykstra, 342 N.W. 2d 220, 222-223 (S.D. 1983).

In one state, Colorado, the state's highest Court has expanded the "neutral principles" approach to include an evaluation of conduct. In Bishop and Diocese of Colorado v. Mote, 716 P.2d 85, 102 (Colo. 1986), petition for cert. filed sub nom. Mote v. Bishop and Diocese of Colorado, 55 U.S.L.W. 3001

(U.S. June 24, 1986) (No. 85-2093), the Supreme Court of Colorado held that:

> "It may be, in the final analysis, that the evidence determinative of the dispute is limited to documentary evidence. However, much of the testimonial evidence concerning the interpretation of various documentary provisions and the historical relationship between the parish and the diocese has at least peripheral relevance and must be evaluated and weighed in arriving at a final resolution."

However, having articulated that broader approach, the Colorado Supreme Court then confined its analysis to documentary instruments of title.

While the decision of whether or not to employ a "neutral principles" test is one of state law, Jones v. Wolf, 443 U.S. at 602, the Constitutional limits of that test is an exceptionally important question of federal law. Because the Third Circuit decided that issue in disregard of the applicable decisions of

this Court, and in conflict with the decisions of the highest courts of several states, the issue warrants resolution by this Court.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: New York, New York
September 8, 1986

Respectfully submitted,

JAMES D. FORNARI
Counsel of Record
RICHARD M. ZUCKERMAN
650 Fifth Avenue
New York, New York 10019
(212) 265-1200

Attorneys for Petitioner

JARBLUM, SOLOMON & FORNARI, P.C.
Of Counsel

APPENDIX

APPENDIX

Decision of District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ST. CYPRIAN'S CHAPEL, INC. :

v. : CIVIL ACTION

FRATERNITY OF THE APOSTLES OF JESUS AND MARY, a/k/a THE SACERDOTAL SOCIETY OF ST. PIUS X : No. 83-6030

MEMORANDUM OF DECISION

McGLYNN, J. SEPTEMBER 16, 1985

On this, the feast day of St. Cyprian, Bishop of Carthage and martyr, the court is called upon to decide the ownership of a chapel in Eddystone, Pennsylvania dedicated to his memory. Invoking the jurisdiction of this court on the basis of diversity of citizenship the plaintiff instituted this action to quiet title to the property. The defendant has counterclaimed for possession and for an accounting. For the reasons

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set forth below, judgment will be entered in favor of the defendant on both the complaint and the counterclaim.

The underlying dispute had its genesis in changes introduced into the liturgy of the Roman Catholic Church by the Second Vatican Council. The Council, among other things, decreed that Mass be said in the vernacular. The Fraternity of the Apostles of Jesus and Mary, a/k/a the Sacerdotal Society of Saint Pius X ("the Society") was established in Switzerland as an experimental pious union in 1970 to encourage vocations into the Roman Catholic priesthood and to promote the traditional Roman Catholic Mass in Latin and other rituals as they were practiced before Vatican II. Due to theological disputes which do not concern this court, the Society was officially

Decision of District Court

suppressed by the Roman Catholic Church on May 5, 1975. Suppression meant that insofar as the Roman Catholic Church is concerned, the Society no longer existed. Despite this, the Society continued to operate and expand. It eventually became established in the United States.

When the Society was first created, certain statutes or rules were promulgated to regulate its operation. In 1976, after the suppression, the Society revised its Statutes which again set forth the purposes of the Society and the rules and regulations under which it operated. The Statutes provide for the proper control of the property of the Society. Nothing in the Statutes prevents the Society from holding property.

The founder and Superior General of the Society was Archbishop Marcel

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Lefebvre. Archbishop Lefebvre held the position of Superior General until 1983 when Father Franz J. Schmidburger assumed the position. For a period of time after Father Schmidburger assumed the title, Archbishop Lefebvre performed the duties of that office in order to facilitate the transfer of authority.

While Archbishop Lefebvre was Superior General, Clarence Kelly, Daniel L. Dolan and Anthony Cekada became members of the Society, studied in the seminary operated by the Society in Switzerland and were ordained to the priesthood by Archbishop Lefebvre. After their ordinations they returned to the United States and were assigned to various aspects of the Society's work in the United States.

In 1976, Father Kelly was appointed American District Superior of

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the Society by Archbishop Lefebvre. According to the Statutes of the Society, this position gave Father Kelly general authority over the District and over the members of the Society within the District. In 1979, Archbishop Lefebvre divided the American District into the Northeast District and the Southwest District, and Father Kelly became District Superior of the Northeast District. Father Daniel L. Dolan was appointed the Director of Missions for the Society in the Northeast and Father Cekada was appointed Bursar for the Society in the Northeast District.

The principal function of the Society is to provide priests to say Mass in Latin for as many people as possible. In order to do this, priests from the Society would travel from city to city on

a regular basis celebrating the Mass in Latin. The celebration would take place in auditoriums or hotel rooms or wherever space was available and accessible. As the Society grew, it began to acquire permanent sites to be dedicated to the celebration of Mass. Churches and other property were purchased throughout the country. Some property was held in the name of the Society of St. Pius X, Northeast District, Inc., a corporation formed by the Northeast District branch of the Society.

The officials of the Northeast District determined that if all of the property of the Society was held in the name of one corporation, the possibility would exist that if the Society suffered financial difficulties in one geographical area, all of the properties could be

lost. Thus, it was decided that individual corporations would be established in each area where Masses were celebrated by priests of the Society.

Each group was provided with detailed instructions on how to form a charitable corporation. Father Cekada, in his position as Bursar, provided the groups with model Articles of Incorporation, model bylaws and model federal tax exemption forms. The Northeast District apparently had some difficulty in deciding the precise language of the bylaws because at least two editions were distributed, one in 1979 and one in 1980.

The letters which accompanied the two editions were form letters signed by Father Cekada as Bursar and written under the letterhead of the Society. The

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letter which accompanies the 1979 edition of the bylaws provides in part: "Father Kelly, Father Dolan and I have decided that we will require each Chapel and Mission of the Society to incorporate under the laws of the respective states." The groups were told that the Society required all of its groups to incorporate and that no exceptions would be made. The sole purpose of forming these corporations was to facilitate the purchase of real estate for the Society.

In February 1976, priests from the Society began celebrating Mass in the Philadelphia/Wilmington area. One of the original participants was Neil D. Tagle who helped to organize the group and became its lay representative. In November 1977, the group adopted the name St. Cyprian's Chapel. This was in accor-

dance with the Northeast District's policy that each group formed by the Society would be designated a chapel or a mission whether or not it owned any property. In 1978, St. Cyprian's Chapel began to raise money to build or purchase a church. In its campaign drives, St. Cyprian's Chapel used the names of Archbishop Lefebvre and the Society extensively in soliciting contributions. Donations were also encouraged by suggestions that St. Cyprian's Chapel could serve as a "home base" to other missions if a church could be obtained.

St. Cyprian's Chapel was at all times financially responsible to the Society. It was required to send payments to the Society's headquarters in the Northeast District to help support the priests who celebrated Mass at the

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Chapel. From sometime in 1978 until at least December 1983, Neil Tagle, as the lay representative of St. Cyprian's Chapel, was required to submit monthly Treasurer's reports to the Society. In June 1980, the forms provided by the Society changed. The new reports were titled "Society of St. Pius X Monthly Treasurer's Report for Mass Locations in the Northeast District." These reports provided detailed information concerning the financial status of St. Cyprian's Chapel, including the amount owed on mortgages, cash on hand and in the bank and a detailed accounting of its expenditures.

St. Cyprian's Chapel was incorporated in February 1980 in accordance with the requirements of the Society under the name St. Cyprian's Chapel, Inc.

in the State of Delaware. Neil Tagle did not originally wish to incorporate, but he submitted to the demands of the Society and became the only lay member of the Board of Directors of the corporation. The purposes of the corporation set forth in the Certificate of Incorporation are:

> to sponsor, promote and conduct religious and religious educational activities for members of the Roman Catholic faith; and to sponsor, promote and conduct the holy sacrifice of the Mass, the administration of the sacraments, and other religious ceremonies for the members of the Roman Catholic faith, including catechical (sic) instruction for children of the Roman Catholic faith and including the training and development of teachers and the publication and dissemination of literature and materials pertaining to the above.

St. Cyprian's Chapel, Inc.'s Certificate of Incorporation does not exactly follow the model supplied by

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Father Cekada, but the officers and Board of Directors named are those dictated by the model, Father Clarence Kelly - President; Father Daniel L. Dolan - Vice President; and Father A. J. Cekada - Secretary/Treasurer. Fathers Kelly, Dolan and Cekada were also on the original Board of Directors as were Father William W. Jenkins, the Secretary of the Northeast District and Neil D. Tagle who lived in Delaware.

In 1980, St. Cyprian's Chapel, Inc. began to negotiate for the purchase of a church building in Eddystone, Pennsylvania. In early October, Father Dolan wrote to Archbishop Lefebvre to inform him of the negotiations and to assure him that when the details of the purchase were known the Archbishop would be asked to approve the purchase. St.

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Cyprian's Chapel, Inc. continued to raise funds to purchase the church. In the newsletters which were used in its fund raising appeals, the name of the Society was prominently and continuously mentioned as was that of Archbishop Lefebvre. The members of the congregation were encouraged to think of St. Cyprian's Chapel as a branch of the Society and communicants were asked to register with St. Cyprian's so that the membership register of the Society and St. Cyprian's Chapel would be complete.

On December 18, 1981, St. Cyprian's Chapel, Inc. entered into an agreement to purchase the church building in Eddystone, Pennsylvania for $55,000.00. The agreement was signed by Neil Tagle for the corporation. On February 2, 1982, the first meeting of the Board of

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Directors of St. Cyprian's Chapel, Inc. was held. All the directors were present except for Neil Tagle who gave his proxy to Father Kelly. At that meeting bylaws were adopted and a corporate resolution was passed to purchase the church in Eddystone, to authorize Neil Tagle to sign documents for the corporation relating to the purchase of the church and to enter into a $35,000.00 mortgage for the purchase of the church.

The bylaws which were adopted by St. Cyprian's Chapel, Inc. are almost identical to the model bylaws provided to Mr. Tagle by Father Cekada as part of the Society's program to separately incorporate the chapels and missions where priests of the Society regularly celebrated Mass. These bylaws were sent to Mr. Tagle in January 1980 just prior

to the time St. Cyprian's Chapel, Inc. was incorporated.

The bylaws provide that the District Superior of the Northeast District of the Society is ex officio a member of the Board and Chairman of the Board and ex officio president of the corporation. The Director of Missions of the Northeast District is ex officio Vice President of the Corporation. The Bursar of the Northeast District of the Society is an ex officio member of the Board and ex officio Secretary/Treasurer of the corporation. A layman who resides in the State of Delaware may also be appointed by the District Superior as a member of the Board to serve at the will of the District Superior.

The bylaws prohibit the Board from spending any amount in excess of

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10,000 Swiss francs a month without the approval of the District Superior of the Society. The Board is also prohibited from selling conveying, transferring or creating a security interest in its property without the approval of the District Superior.

The bylaws also provide that any plan for voluntary dissolution of the corporation must be approved by the District Superior of the Northeast District of the Society before it may be submitted to the Delaware Secretary of State. The bylaws also provide: "The plan of dissolution shall require that the net assets of the dissolved Corporation shall be distributed in accordance with the instructions of the District Superior of the Northeast District of the Society of Saint Pius X

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in the United States, or by his delegate, or as required by the Non-Profit Provisions of the Non-Profit Corporations Act of the State of Delaware."

On February 12, 1982, Father Kelly wrote to Archbishop Lefebvre to ask for permission to purchase the Eddystone property. Archbishop Lefebvre responded that he was pleased with its acquisition. Closing on the property took place on April 30, 1982 and title was taken in the name of St. Cyprian's Chapel Incorporated. A mortgage and mortgage note were executed to the Bank of Delaware in the amount of $35,000.00. Fifteen lay members of St. Cyprian's Chapel personally guaranteed the payment of the note and mortgage.

At all times prior to the present dispute, Father Kelly, Father Dolan,

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Father Cekada and Neil Tagle expressly and implicitly acknowledged not only the ties between the Society and St. Cyprian's Chapel but also that the property of St. Cyprian's Chapel, Inc. was subject to the authority of the Society and Archbishop Lefebvre. The newsletters published by St. Cyprian's Chapel, Inc. continued to link the names of the Society and Archbishop Lefebvre with that of St. Cyprian's Chapel. The May 1982 newsletter reads: "We are sure that everyone will be pleased with our new Church and hope that everyone will continue to support the work of the Society of St. Pius X." In November 1982 the newsletter welcomes Father Hesson to the Society and St. Cyprian's although Father Hesson never formally joined the Society but only said Mass at

the chapel. It is also mentioned that Father Hesson had a letter of introduction from Father Kelly, District Superior of the Society. The newsletter also informed the congregation that official mailings from St. Cyprian's Chapel would only be done under the Society's letterhead or that of St. Cyprian's. The June 1982 newsletter reads:

> There is not enough space in this newsletter to thank everyone individually, who has contributed to the renovation of our church. From the children who scrapped [sic] paint and cleaned the grounds, to the faithful painters and plasterers, to the movers and drivers, to the contributors of needed items, a heartfelt thanks from the Society of St. Pius X. St. Cyprian's Church would not be what it is today without the help from each and everyone of you.

In October 1982, St. Cyprian's Chapel, Inc. formed the Patrons of St.

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Cyprian's as a fund raising organization. People were encouraged to donate by the promise that the names of contributors would be placed on a bronze plaque to be blessed by Archbishop Lefebvre when the church was dedicated. Advertisements designed to attract new people to the chapel prominently mention the name of the Society. Father Kelly, the District Superior of the Society and President of the corporation expressly stated that the final authority to sell any of the chapels rests "exclusively and ultimately with the Archbishop. Even the boards of directors of the various associations have no authority apart from that which they have received from the Archbishop, so that there is no need at all for the Archbishop to get permission from anyone involved to sell

or not to sell any and all of the properties of the Society."

In March 1983, a theological dispute arose between Fathers Kelly, Dolan, Cekada and Jenkins on the one side and Archbishop Lefebvre on the other. Archbishop Lefebvre considered the dispute so fundamental and irreconcilable that as a result, Fathers Kelly, Dolan, Cekada and Jenkins were removed from their positions and dismissed from the Society.

After Fathers Kelly, Dolan, Cekada and Jenkins were separated from the Society, they along with Neil Tagle, acting as the Board of Directors of St. Cyprian's Chapel passed a resolution amending the bylaws of the corporation. The amended bylaws contain no mention of the Society. The Board of Directors,

now referred to as the Board of Trustees, was also constituted as a self perpetuating body.

Both the Society and St. Cyprian's Chapel, Inc. as now constituted claim ownership of the property.

When resolving a dispute among members of religious organizations, the court must exercise extreme care to avoid an intrusion into the theological doctrines and beliefs of the parties. Consistent with this principle, two approaches to disputes between or within religious entities have evolved.

The first, known as the "deference approach", requires the court to defer to the decisions of the highest adjudicatory body of a hierarchically governed religious organization. Watson v. Jones, 80 U.S. (13 Wall.) 679, 727

(1872). Under this approach, the only real decision made by the court is whether the organization is hierarchically organized. Once that decision is made, the court defers to the decision of the highest adjudicatory body in that hierarchy. The second theory is known as the "neutral principles approach." Under this method, the court employs the secular concepts of trust and property law to determine the ownership of church property, bypassing any doctrinal disputes. Jones v. Wolf, 443 U.S. 595 (1979); Babcock Memorial Presbyterian Church v. Presbytery of Baltimore of the United States, 296 Md. 573, 464 A.2d 1008 (1983), cert. denied, 104 S. Ct. 1287 (1984). Either method is considered proper and the courts of each state are permitted to choose between

them so long as the method chosen "involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenents [sic] of faith." Jones v. Wolf, 443 U.S. at 602 (1979), quoting Maryland & Va. Eldership Church of God at Sharpsburg, 396 U.S. 367, 368 (Brennan, J. concurring) (1979).

In a recent application of these rules the Pennsylvania Supreme Court in Presbytery of Beaver-Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church, 489 A.2d 1317 (Pa. 1985) held that when the resolution of a property dispute would require probing into ecclesiastical and doctrinal issues, the deference approach should be invoked. Thus, when the property dispute would

require determination of which faction is the true church in an ecclesiastical sense, the deference approach is the appropriate method to be applied. When, however, the resolution hinges upon the interpretation of wills, trusts, contracts and other secular aspects of property law, the neutral principles approach should be used. Id. at 1323.

In the instant case, the plaintiff contends that the Society has no control over the property because plaintiff never agreed to hold the property in trust for the Society. The defendant rejects this contention and argues that the property was at all times held in trust for the Society. Thus, the underlying theological differences are of no concern to the court. The court need only consider whether the property

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in question is owned outright by St. Cyprian's Chapel, Inc. or whether it is held in trust for the Society. The neutral principles analysis, therefore, is the appropriate standard to be applied in resolving the issue in this action.

An express trust is created when the settlor manifests an intention to create a trust. Gray v. Liebert, 357 Pa. 130, 53 A.2d 132 (1947). While no particular words are necessary, the settlor's manifestation of intention must be "definite, clear, and explicit, and embody all the essential elements [of a trust]...." Provident Trust Co. of Philadelphia v. Lukens Steel Co., 359 Pa. 1, 58 A.2d 23 (1948), quoting Brubaker v. Lauver, 322 Pa. 461, 185 A. 848, 849 (1936). The beneficiary has

the burden of proof to establish that a trust exists. Van Sciver v. Rothensies, 122 F.2d 697 (3d Cir. 1941).

An express trust may be created through words or conduct. Gray v. Liebert; Leggett v. United States, 418 F.2d 1257 (3d Cir. 1969); 89 C.J.S. Trusts §11 (1955); Restatement (Second) of Trusts, §24 (1965). It is not necessary to use the words "trust", "trustee" or "beneficiary". The basic question the court must answer is whether an equitable duty to deal with the property for the benefit of another has been created. In re Estate of Corbett, 430 Pa. 54, 241 A.2d 524 (1968); Buchanan v. Brentwood Federal Savings & Loan Assn., 457 Pa. 135, 320 A.2d 117 (1974).

While there has been no creation of a trust per se in the St.

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Cyprian's Chapel, Inc. corporate documents, it is clear from those documents and the actions of the priests and laity that the parties intended to create a trust for the benefit of the Society. As stated in Presbytery of Beaver-Butler, supra.

> In conducting this inquiry the primary focus must be on the intent of the settlor at the time of the creation of the alleged trust.

Id. at 1324. Furthermore, the absence of language creating an express trust in the corporate documents is not determinative. Again Presbytery of Beaver-Butler is instructive when it states,

> No particular form of words or conduct is required to manifest the intention to create a trust. Such manifestation of intention may be written or spoken words or conduct indicating that settlor intended to create a trust.

Id. quoting Bair v. Snyder County State

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Bank, 314 Pa. 85, 89, 171 A.274, 275 (1934).

There were numerous occasions when the members of the Board of Directors of St. Cyprian's Chapel, Inc. by their words and conduct have acknowledged that the property was held subject to the will of the Society and for its benefit. Moreover, an examination of the Certificate of Incorporation and the bylaws demonstrates that St. Cyprian's Chapel, Inc. intended to hold its property in subordination to the interests of the Society. All the elements of a trust are present in these documents. The beneficiary is clearly the Society. The res of the Trust are the assets of St. Cyprian's Chapel, Inc. The trustee is the corporation since the property was not to be transferred to

another party but simply held for the benefit of the Society. The Certificate of Incorporation specifies that all assets of the corporation are dedicated to and are to be used exclusively "for the purpose of promoting and developing religious ceremonies and the religious education of the children of the Roman Catholic faith."

According to the original bylaws, the Society had complete control of the selection of the Board of Directors and the officers of the corporation. The Board's use of the assets of the corporation are subject to the control of the District Superior of the Northeast District of the Society. Only a limited amount of money could be spent without approval and the Board could not unilaterally dispose of corporate assets.

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These provisions clearly demonstrate that the parties intended to, and did, create a trust of St. Cyprian's for the benefit of the Society.

The acts of the parties relating to the purchase of the Eddystone chapel also reflect their desire to establish an express trust in favor of the Society. Initially, the St. Cyprian's Chapel, Inc. solely controlled the chapel building fund, which was used for the down payment on the chapel mortgage. Legal title to the chapel was held by St. Cyprian's Chapel, Inc., which was controlled by the Society's priests, who were empowered under the corporation's bylaws to perpetuate their control over the corporation without any consideration of the laity. The laity were also aware that the Society was pro-

viding the Mass at the chapel and the laity regularly contributed funds to the Society. Finally, it is clear from the testimony of the laity at trial that they did not actively participate in the administration of the chapel or of the corporation. They relied upon the priests, who were geographically remote, and the lay board member appointed by the priests to administer the corporation.

Thus, the corporation's obligation to hold the property for the benefit of the Society could not be clearer. The chapel was purchased as part of the expansion of the Society in the United States and it provided a focal point around which to gather people so that the Society could serve not only those originally associated with the Chapel

but also those who would be attracted to a permanently established organization.

St. Cyprian's Chapel, Inc., its directors and officers at all times behaved as though the property was held in trust for the Society. Each month detailed financial reports were submitted to the Society which manifest an acknowledgement that the Society had an interest in the property of the corporation and a right to be kept informed about how the assets of the corporation were being used.

The corporation's continuing intention to hold the property in trust for the Society is also shown through the appeals for funds to renovate the property and pay off the mortgage. The Society and the Archbishop were constantly mentioned in the newsletters

distributed by the corporation. The contributors to the building fund were thanked in the name of the Society, and when Father Hesson began to say Mass at the chapel, he was welcomed to the Society, not because he joined the Society, but simply because he was saying Mass at the Chapel. In these and many other ways the corporation demonstrated that it and its property were part of the Society and were to be used for the Society's purpose.

Even if an express trust had not been established, the evidence shows that a constructive trust should be imposed. A constructive trust is created when the holder of property has an equitable duty to convey it and would be unjustly enriched if it were not forced to convey it. Gray v. Liebert, supra;

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Buchanan v. Brentwood Federal Savings & Loan Assn., supra. A necessary element of a constructive trust is that the trustee "must have acquired it in some way that creates the equitable duty in favor of the plaintiff." Pierro v. Pierro, 438 Pa. 119, 264 A.2d 692 (1970). St. Cyprian's Chapel raised money for the purchase of this property through the use of the Society's name. It created the impression that the property would be and was part of the Society and would be used for the purposes of the Society. It would be inequitable to now allow the corporation to keep the property when it was its connection to the Society which played such a prominent role in its fundraising.

A constructive trust is created where the control of property was

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induced by fraud, duress, undue influence, or mistake, of if the control was the result of an abuse of a confidential relationship. Yohe v. Yohe, 466 Pa. 405, 353 A.2d 417 (1976). Fathers Kelly, Cekada, Dolan and Jenkins were priests of the Society and held positions of authority within the Society's hierarchy. Thus, a confidential relationship existed between these priests and the Society.

Father Cekada, as District Econome for the Northeast District, abused this confidential relationship when he established St. Cyprian's Chapel, Inc. as an independent entity beyond the control of the Society. Father Cekada testified that he discussed the composition of the local boards of directors in a February, 1980

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meeting with two of his European Society superiors, Father Roch, the Society's Econome General, and Father Williamson, the special representative of the Superior General and of the Society. In particular, they agreed that the seven member board of directors would be controlled by the European members of the Society, 4-3. Father Cekada subsequently promised Father Roch and the Superior General that these changes in the local corporation would soon be made. Father Cekada sent a letter to Father Roch on March 21, 1980 stating:

> As to the necessary revisions which we discussed in the Model Articles and By-Laws for the Northeast District, I will wait until all of the legal work is completed for all the chapels, and then we will try to change them all at once in accord with the revisions suggested by yourself and Father Williamson. It will take quite a while, I fear, but the results will put the

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> Society's mission chapels on a solid legal foundation which will serve us for many years in the future.

This letter shows that Father Cekada was obligated to make the changes, guaranteeing Society control of the local corporation and agreed to do so. These changes were, in fact, never made in the St. Cyprian's Chapel, Inc. corporate documents.

There is no rigid standard for determining whether the facts of a particular case require a court to impose a constructive trust. The test is whether or not unjust enrichment can be avoided. Stauffer v. Stauffer, 465 Pa. 558, 568, 351 A.2d 236 (1976). A finding of a "confidential relationship" between a transferor and a transferee is not confined to any particular association of parties, but may exist whenever one

occupies towards another a position which reasonably inspires confidence that he will act in good faith. Foster v. Schmitt, 429 Pa. 102, 239 A.2d 471 (1968); Hamberg v. Barsky, 355 Pa. 462, 50 A.2d 345 (1947). The Pennsylvania Supreme Court's plain language in Hamberg v. Barsky, supra, is particularly instructive:

> Here one person has said to another, knowing him to be desirous of renewing a lease essential to his business, that he himself will attend to the matter for the other's benefit, with the added admonition that the latter should refrain from negotiating for it on his own account; relying on this representation, the other does so refrain and thereupon the one who has thus obligated himself deliberately proceeds to secure the desired lease, not for the other, but for himself. Surely this constitutes what might almost be regarded as a typical example of the kind of situation in which equity acts to give relief to the defrauded party.

Id. 50 A.2d at 347 (emphasis added).

Clearly, Father Cekada and the other priests were in a position of trust within the Society. The Econome General, Father Roch, relied upon Father Cekada's representations when he agreed to establish the local corporations in the form required by Father Roch. By failing to carry out the orders of Father Roch after promising to do so, Father Cekada abused a confidential relationship, and a constructive trust over the St. Cyprian's property should be declared in favor of the Society.

The property is also subject to the control of the Society under Pennsylvania's Control of Church Property Act, 10 P.S. §81 (1935), which provides in pertinent part:

> Whensoever any property, real or personal, has heretofore been or

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> shall hereafter be...conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture,...the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated:

Under the terms of this statute, the property of St. Cyprian's Chapel, Inc. is subject to the control of the Society both under the Statutes of the Society

and the bylaws of the corporation. This is because the property was taken for the use of the Society and in trust for the Society.

The plaintiff, however, advances the argument that since the statute requires that the rules of the religious society to which the religious corporation belongs shall be exercised in accordance with the rules of the denomination to which the religious society belongs, the statutes of the Society which would allow the Society to operate, must be exercised in accordance with canon law, the law of the Roman Catholic Church. The plaintiff reasons that since the Society was suppressed, it no longer exists according to canon law and under canon law a society which has been suppressed may no longer

control church property. Plaintiff concludes that the Society may not control property by the term of this statute.

At first glance, plaintiff's argument sounds rather convincing. It has, however, a fatal flaw. All the priests and, indeed, the Roman Catholic Church agree that the Society is not officially recognized as part of the Roman Catholic Church. Since it is not an officially recognized part of the Roman Catholic Church, it does not "belong" to that denomination under the terms of the statute.[1]

It is no answer to argue that

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[1] This court, of course, expresses no opinion as to whether the official suppression was valid or invalid or whether in the face of an invalid suppression the Society would still exist under canon law. Further, the court expresses no opinion as to whether

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the Society does not exist because it does not exist under canon law. The Society is a functioning entity whether or not it operates with the sanction of the Roman Catholic Church.

The Society was suppressed by the Roman Catholic Church in 1975. Masses were first celebrated under the auspices of the Society in the Philadelphia/Wilmington area in 1976. In 1978 St. Cyprian's Chapel began to raise money for the building fund trading upon the name and goodwill of the Society. In 1980 St. Cyprian's Chapel, Inc. was formed under the direction of and according to the specifications of the Society. In 1982, the chapel was purchased. All of these

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persons belonging to the Society would still be considered part of the Roman Catholic Church.

major events occurred well after the Society was suppressed. When St. Cyprian's Chapel was formed under the Society, they took the Society as it was. There were no illusions on the part of those who formed St. Cyprian's Chapel, Inc. that the Society was officially recognized by the Roman Catholic Church. The corporation cannot now contend that they were misled or that what they accepted as established is an illusion.

The plaintiff also contends that the laws of the State of Delaware, where St. Cyprian's Chapel, Inc. is incorporated, prevent the directors of a corporation from agreeing privately to act in the best interest of persons other than the corporation. This argument begs the question. The corporation

is obligated by law to hold the property for the benefit of the society.[2]

Defendant shall submit an appropriate order.

BY THE COURT

s/Joseph L. McGlynn, Jr.
JOSEPH L. McGLYNN, JR.

ENTERED: 9/16/85

Clerk Of Court

2

Because I believe the "neutral principles" approach is the appropriate guide in this case I do not find it necessary to make detailed findings with respect to the hierarchial governance of the society.

Final Judgment of District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ST. CYPRIAN'S CHAPEL, INC. :

v. : CIVIL ACTION

FRATERNITY OF THE APOSTLES OF JESUS AND MARY, a/k/a THE SACERDOTAL SOCIETY OF ST. PIUS X : No. 83-6030

ORDER

AND NOW, this 16th day of OCTOBER, 1985, pursuant to the findings of fact and conclusions of law incorporated in the Memorandum of Decision filed on September 16, 1985, it is

ORDERED, ADJUDGED and DECREED

1. A constructive trust exists over the real property located at 1400 East 10th, Eddystone, Delaware County, Pennsylvania ("the St. Cyprian's Chapel real estate"), to the benefit of the Society of St. Pius X. Legal title to the property has heretofore been held by

the plaintiff in this action, St. Cyprian's Chapel, Inc., a Delaware non-profit corporation. Legal title to the St. Cyprian's Chapel real estate shall be transferred from St. Cyprian's Chapel, Inc. to the Society of St. Pius X South-West District, Inc. To effectuate this transfer of title, the parties shall enter into and file with the Delaware County Recorder's Office an appropriate indenture and corporation deed within thirty (30) days of the date of this Order.

2. The plaintiff, St. Cyprian's Chapel, Inc., shall provide to the defendant, the Society of St. Pius X, all documents and other materials necessary to perform a full accounting of the assets of St. Cyprian's Chapel, Inc. as of April 27, 1983, including

without limitation: (a) Copies of all documents pertaining to St. Cyprian's Chapel, Inc. up to and including the date of this Order, including Articles of Incorporation, Corporate By-Laws, Minutes of the Meetings of the Board of Directors, Appointments of Proxy, Resolutions, etc.; and (b) all documents related to the ownership and financing of the St. Cyprian's Chapel real estate including, but not limited to, any mortgages, notes, repayment records or agreements related to the financing of the purchase of the St. Cyprian's Chapel real estate; and (c) All documents related to the financial operation and fundraising of the St. Cyprian's Chapel, Inc.

3. The plaintiff, St. Cyprian's Chapel, Inc., shall, within thirty (30)

Final Judgment of District Court

days of the date of this Order, execute a bill of sale in favor of the Society of St. Pius X --South-West District, Inc. conveying title to all chattels and personal property in St. Cyprian's Chapel as of April 27, 1983.

4. From the date of this Order, plaintiff St. Cyprian's Chapel, Inc. is enjoined from using the name the "Society of St. Pius X".

BY THE COURT:

s/Joseph L. McGlynn, Jr.
JOSEPH L. McGLYNN, JR.

ENTERED: 10/17/85

Clerk of Court

Order of Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 85-1726

ST. CYPRIAN'S CHAPEL, INCORPORATED,

Appellant

vs.

FRATERNITY OF THE APOSTLES
OF JESUS AND MARY, a/k/a THE
SACERDOTAL SOCIETY OF ST. PIUS X

Appeal from the United States
District Court For
The Eastern District of Pennsylvania
(Civil Action No. 83-6030)

District Judge: Honorable Joseph L.
McGlynn, Jr.

Argued June 5, 1986

BEFORE: GIBBONS, BECKER, and STAPLETON,
Circuit Judges

JUDGMENT ORDER

After consideration of the con-

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tentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

s/Walter K. Stapleton
Circuit Judge

ATTEST:

s/
Clerk

DATED: June 12, 1986